

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4062 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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NAI MANGANLAL SAMELO

Versus

STATE OF GUJARAT

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Appearance:

MS KUSUM M SHAH for Petitioner

MS. HARSHA DEVANI, AGP, for the respondents

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 20/10/1999

ORAL JUDGEMENT

Counter affidavit has been filed by the State of Gujarat. Learned counsel for the petitioner and the learned A.G.P. have been heard. The petition is being finally disposed of at this stage.

The prayer of the petitioner is to quash the decision of the Collector taken on 30.9.1998 directing removal of alleged encroachment made by the petitioner. Another prayer is that the order of the Special Secretary

dated 20.2.1999 refusing to grant injunction pending appeal be also quashed. The third prayer is that during final disposal of this petition the order of the Collector dated 30.9.1998 be stayed and the last prayer is in the nature of interim relief.

An order of removal of encroachment allegedly made by the petitioner narrowing the width of the road was passed by the Collector on 30.9.1998. Admittedly, an appeal has been filed by the petitioner before the Special Secretary which is pending. It appears that interim stay was sought before the Special Secretary who refused the interim prayer by order dated 20.2.1999. Actually against this order the petitioner feels aggrieved. If the appeal is already pending before the Special Secretary against the order of the Collector dated 30.9.1998, it will mean that the petitioner is availing of alternative remedy and hence this writ petition for issuing writ of certiorari against the order of the Collector dated 30.9.1998 is not maintainable.

So far as the order of the Special Secretary dated 20.2.1999 is concerned, it seems to be arbitrary and unjust. If the appeal was admitted it presumes that there were certain points which can be said to be arguable in appeal and if the order of the Collector was not stayed during pendency of the appeal the very purpose of filing the appeal would have been frustrated, in case the petitioner is removed from the site and structure is demolished. In this view of the matter, the order of the Special Secretary in appeal passed on 20.2.1999 does not seem to be just, reasonable and in accordance with law.

Since the appeal is already pending before the Special Secretary, this writ petition is disposed of with direction to the Special Secretary to decide the pending appeal within a period of three months from the date of production of copy of this order. Till the appeal is finally disposed of by the Special Secretary and for a period of ten days thereafter, the operation of the impugned order of the Collector passed on 30.9.1998 shall remain stayed. No order as to costs. Direct service is permitted.

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